

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The 2004 Biennial Review of)	WT Docket No. 04-180
Telecommunications Regulations)	
)	
To: The Commission)	

COMMENTS OF PCIA – THE WIRELESS INFRASTRUCTURE ASSOCIATION

PCIA – The Wireless Infrastructure Association (“PCIA”) submits these comments in response to the May 11, 2004 Public Notice ¹ issued in the above-referenced proceeding. As directed in the Public Notice, PCIA approaches this Section 11² review under the guidance of the D.C. Circuit Court of Appeals *Cellco Partnership*³ decision. In so doing, PCIA identifies several Part 17⁴ requirements that should be revised to reflect changes in the marketplace, including the introduction of competition into the communications infrastructure industry.

Although several wireless carriers continue to provide the towers and other locations on which wireless transmission facilities are deployed, today roughly one-half of the sites used to support wireless services are provided by non-licensed, infrastructure providers – entities that have built or acquired wireless infrastructure and compete against one another to provide tower and other infrastructure to wireless carriers for the

¹ The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations, *Public Notice, FCC 04-105 (released May 11, 2004)*.

² 47 U.S.C. § 161.

³ *Cellco Partnership v. FCC*, 357 F. 3d. 88 (D.C. Dir. 2004).

⁴ 17 C.F.R. §§ 17.1 *et seq.* (2002)

placement of the carrier's facilities. Indeed, there are five publicly traded entities⁵ and hundreds of privately-held firms that provide infrastructure, in direct competition with one another, to wireless and broadcast providers. This is a relatively recent development, which postdates the promulgation of nearly all the Commission's Part 17 rules and, accordingly, has not been reflected in these rules. As set out below, these developments in the market compel changes in certain of the definitions included in Part 17, as well as substantive provisions of these rules.

Section 17.2 of the Commission's rules define "antenna structure" and "antenna structure owner" as a structure (or the entity owning a structure) "... includ[ing] the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon." In today's environment, such a definition is too broad, as it includes (in many situations) carrier transmission facilities that are neither owned, nor controlled by tower/infrastructure providers. As such, the compliance obligations of licensed carriers and, largely, unlicensed infrastructure providers become ambiguous, resulting at best in wasteful, duplicative compliance efforts by both entities. This definition needs to be revised to make it clear who has marking, lighting, and notification obligations under the Commission's Part 17 rules.

Section 17.4 of the Commission's rules requires structure owners to immediately provide paper copies of FCC Form 854R to each permittee and tenant licensee. This regulation was promulgated before the Commission's Universal Licensing System ("ULS") was created and electronic filings became commonplace. Given that the required 854R information is currently posted on the ULS website, Section 17.4(f) should

⁵ American Tower Corporation, Crown Castle International, Global Signal, SBA Communications Corporation, and SpectraSite Communications, Inc.

be revised to require permittees and licensees to obtain a copy of the 854R from the website. This would save infrastructure providers the expense of generating and distributing paper copies of the document and save carriers the time and expense of dealing with the paper copy and confirming the accuracy of the data provided thereon. Section 17.6 of the Commission's rules should be revised accordingly.

Section 17.23 of the Commission's rules references Federal Aviation Administration ("FAA") Advisory Circular AC 70/460-1J and makes compliance with the painting and lighting provisions in that circular mandatory. Circular AC 70/460-1J has been superseded, creating a conflict between the Commission's marking and lighting requirements and the FAA's. PCIA encourages the Commission to revise Section 17.23 to conform – in all aspects -- its requirements to those of the FAA on an ongoing basis. These marking and lighting are matters affecting public safety and all ambiguity regarding such obligations should be removed.

Section 17.47 of the Commission's rules requires that all automatic or mechanical control devices, indicators and alarm systems be inspected at intervals not to exceed three months. In today's environment, in a great many of the cases, these systems are automatically monitored in a near real-time, continuous fashion by centralized network operational control ("NOC") centers – control centers operated by infrastructure providers and substantially similar to those used by wireline and wireless carriers to monitor network operations. In situations such as these, quarterly physical examination of towers and the like are simply unnecessary. Such a requirement is inconsistent with the modern monitoring technology now deployed and imposes needless and costly burdens on the infrastructure and carrier industries – costs that eventually must be

recovered from consumers. PCIA strongly encourages the Commission to reevaluate Section 17.47 of its rules to recognize the marketplace developments that support elimination (or at least substantial revision) of this requirement. At a minimum, the Commission's rules should relieve those entities that have implemented NOC technology of needless manual inspections. In so doing, the Commission would not only reward those who adopt state-of-the-art monitoring technology, but also would encourage those who have not yet adopted continuous monitoring practices to do so.

Section 17.50 of the Commission's rules should be harmonized with the FAA's rules regarding cleaning or repainting towers as often as necessary to maintain good visibility. The Commission's rules provide no standard for measuring good visibility. PCIA suggests that the rule be revised to reflect the standard used by the FAA. In particular, PCIA recommends that the FCC revise this section to state that visibility standards are met if the paint on the structure is within the color tolerance depicted on the FAA's "In Service Aviation Orange Tolerance Chart," as measured against the base of the tower from a distance of one-quarter mile. Such a revision provides unambiguous guidance to infrastructure owners in this regard and minimizes potential deviations between FAA and FCC application of painting and marking requirement – both to the benefit of air safety.

Section 17.51 of the Commission's rules should be harmonized with the FAA's treatment of malfunctioning top steady or any flashing obstruction light. Section 17.51(a) requires that red obstruction lights be exhibited from sunset to sunrise, but does not deal with situations in which notification of the malfunction of any such light is given to the FAA (in a NOTAM). Similarly, 17.51 (b) requires constant operation of all high and

medium intensity lights. The FAA rules provide for the provision of NOTAMs upon the malfunction of a top steady or any flashing obstruction light. NOTAMs must be renewed if the malfunction extends more than fifteen days. The FAA does not provide for a NOTAM on the malfunction of steady burning side lights. The Commission's rules should be revised, PCIA suggests, to recognize the impact of FAA-compliant NOTAMs. That is, Section 17.51 should be revised to provide that a malfunctioning top steady or flashing top steady or any flashing light does not violate Section 17.51, so long as a NOTAM has been sought and issued by the FAA. The rule should also provide that Section 17.51 is not violated when a malfunction is beyond the control – such as in a power failure -- of the tower owner/operator.

Section 17.57 of the Commission's rules should be harmonized with the FAA's procedures. This section requires that the owner of a registered tower notify the FCC within twenty-four hours of construction or dismantlement of a tower/structure. It also requires such a registrant to notify the FCC within twenty-four hours of any change in ownership. PCIA suggests that the rule be revised to comply with the FAA's treatment of such actions. Harmonizing the Commission's and FAA's rules in this regard will reduce compliance burdens, of industry and both agencies, make compliance easier, and reduce compliance costs – all without adversely effecting air safety.

PCIA urges the Commission to revise and harmonize its requirements under Part 17 for antenna towers in light of the marketplace developments that have occurred in the past ten years.

Respectfully submitted,

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